

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

DARRELL KIMBROUGH, MSN, FNP-C, §
MARY BENARD, MSN, FNP-C, and §
TINA SPOHN-LEDFOORD, MSN, FNP-C; §

Plaintiffs, §

v. §

CIVIL ACTION NO. 2:18-CV-82-D-BR

NAEEM KHAN, M.D. and §
AMARILLO URGENT CARE, LLC, §

Defendants. §

DEFENDANTS' SECOND AMENDED PRETRIAL DISCLOSURES

TO: Plaintiffs, Darrell Kimbrough, MSN, FNP-C, Mary Benard, MSN, FNP-C and Tina Spohn-Ledford, MSN, FNP-C by and through their counsel of record, Shawn D. Twing, Mullin, Hoard & Brown, LLP 500 S. Taylor, Suite 800, P. O. Box 31656, Amarillo, Texas 79120-1656 and Elizabeth A. Chermel, Mullin, Hoard & Brown, LLP 2515 McKinney Ave., Suite 900, Dallas, Texas 75201.

A. WITNESSES

1. Defendants expect to call the following witnesses at trial:

1. DEFENDANTS

Amarillo Urgent Care

Naeem Khan, M.D.

Agents and Employees, including any Custodian of Records, as listed below:

c/o

Casey Erick

Cowles & Thompson, P.C.

901 Main Street, Suite 3900

Dallas, Texas 75202

214-672-2138

Office Administrator – Cris Rico

Former Office Administrator - Melissa Chavez

Office Manager – Vicki Ellington

Nurse Practitioner – Nicole L. Slatten

Medical Assistants/Scribes –Samantha Huerta, and Hope Catano

The above witnesses will provide testimony regarding the facts of this case and Defendants' claims, defenses and damages.

2. PLAINTIFFS

Darrell Kimbrough
Mary Benard
Tina Spohn-Ledford
c/o MULLIN, HOARD & BROWN, LLP
Shawn D. Twing
Beth Bones
500 South Taylor, Suite 800
P. O. Box 31656
Amarillo, Texas 79120-1656
Phone: (806) 372-5050
- AND -
Elizabeth A. Chermel
bchermel@mhba.com
2515 McKinney Avenue, Suite 900
Dallas, Texas 75201
Phone: 214-754-0040

3. DEFENDANT AMARILLO URGENT CARE – PAYROLL SERVICES PROVIDER

Professional Payroll Systems, Ltd.
“ProPay” Agents and Employees, including:
Lauren Williams, Payroll Specialist
9525 Business Interstate 40
Amarillo, Texas 79124
P. O. Box 509 (79105)
(806) 356-9997
The above witnesses may provide testimony regarding the records obtained from ProPay and the interpretation of said records.

4. PROVIDER OF URGENT CARE ELECTRONIC MEDICAL RECORDS SOFTWARE & PRACTICE MANAGEMENT

DocuTAP Agents and Employees
101 S. Phillips Ave., Suite 300
Sioux Falls, South Dakota 57104
Sales (866) 838-4543
Support (877) 697-4696
The above witnesses may provide testimony regarding the records obtained from DocuTAP and the interpretation of said records.

5. FORMER ATTORNEY FOR DEFENDANTS

Michael A. Warner
The Warner Law Firm
101 S.E. 11th St., Suite 301
Amarillo, Texas 79101
(806) 372-2595

The above witness may provide testimony regarding Plaintiff, Darrell Kimbrough's subsequent employment with Concentra and may also offer testimony regarding Defendants' attorney's fees and expenses.

6. PROVIDER OF URGENT CARE ELECTRONIC MEDICAL RECORDS SOFTWARE & BILLING SERVICES

Practice Velocity Agents and Employees
Penny Ratzlaff, CPC (Director of Billing Support)
8777 Velocity Dr.
Machesney Park, Illinois 61115
(815) 713-2684

The above witnesses may provide testimony regarding the records obtained from Practice Velocity and the interpretation of said records.

7. REGARDING PLAINTIFF DARRELL KIMBROUGH – ALLEGED OFFER OF EMPLOYMENT

Donita Crowder
Tirra Kenney
Agents and Employees
Concentra Health Services, Inc.
(972) 725-6422
(972) 725-6695

The above witnesses may provide testimony regarding the subsequent employment of Plaintiff, Darrell Kimbrough at Concentra facilities in Lubbock, Texas or Amarillo, Texas.

8. DEFENDANTS' EXPERT WITNESSES

Casey S. Erick
COWLES & THOMPSON, P.C.
901 Main Street, Suite 3900
Dallas, Texas 75202
Telephone: (214) 672-2138
Facsimile: (214) 672-2338

Jeremi K. Young
Tim Newsom
YOUNG & NEWSOM, P.C.
1001 S. Harrison, Suite 200
Amarillo, Texas 79101
Telephone: (806) 331-1800
Facsimile: (806) 398-9095

Michael A. Warner
The Warner Law Firm
101 S.E. 11th St., Suite 301
Amarillo, Texas 79101
(806) 372-2595

The above witnesses may testify concerning the amount of attorneys' fees incurred in this matter and whether such fees are reasonable and necessary. They will testify concerning, among other things, the hourly rates of the professionals working on this case; the hours expended by each professional; the fees, expenses, or costs that were or will be incurred by the Plaintiffs and/or Defendants; and the customary and usual nature, reasonableness, and necessity of the fees, costs, and expenses that were or will be incurred by Plaintiffs and/or Defendants in this matter, including, if applicable, any appeal of the captioned case.

The testimony will be based on, among other things, the time and labor required, the novelty and difficulty of the questions involved; the skill required to perform the legal services properly; the time limitation imposed by the client or circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the lawyer or lawyers performing the services; and all other matters relevant to an award of attorneys' fees, costs, and expenses.

PRACTICE VELOCITY URGENT CARE SOLUTIONS – EXPERITY
(Experity is a May 2019 merger between Docusoap, Inc. and Practice Velocity, LLC)

Matthew Logan – General Counsel
Penny Retzlaff – Director of Billing
Chase Jensen – Software Engineer
Nathaniel Scald – Support Specialist

8777 Velocity Drive Machesney Park,
Illinois 61115
Tel: (888) 357-4209
Fax: (815) 986-1675

Practice Velocity provides electronic health records software and services for urgent care healthcare providers. Practice Velocity generated reports, as requested by Defendants, which evidence the login and logout activity (both the time and IP address used to login or out) of Plaintiffs using the Practice Velocity software, during the time period Plaintiffs were employed by Defendants. Those reports were produced to Plaintiffs and Bates numbered D*1000-1021, in response to Plaintiffs' Request for Production No. 20 requesting "All records evidencing Plaintiff's use or access to any software or computer system used by Defendants to chart patient care provided by Plaintiff on behalf of AUC. In answering this request, provide date and time the software or system was accessed and the duration of time the software or system was accessed."

Defendants also refer to any additional records identified below and in Plaintiffs' pretrial disclosures.

Defendants reserve the right to call all employees, software engineers, programmers, agents or custodians of records from Practice Velocity, now Experity, who were involved, in any way, in generating the referenced reports. They may be called upon to provide testimony concerning their observations, actions, opinions, or conclusions arising from or related to the reports and the information generated, including the underlying data which provides the basis for the report.

Their opinions will be based on their education, training, experience and expertise within their respective professional fields.

Diane Meehan, Ph.D., RN, FNP-BC, CLNC

208 Chelsea Street
Staten Island, NY 10307
718-967-0179
646-496-2809
MeehanPhD@NP.legal

Diane Meehan is a Board Certified Family Nurse Practitioner with over 40 years clinical experience in hospitals, long term care facilities, home health, primary care and academia. She obtained her Bachelor of Science degree in Nursing from the Bellevue School of Nursing at Hunter College in New York City in 1979; Masters of Science degree in Nursing Education from Wagner College in Staten Island, NY in 1992; and a Ph.D. in nursing from Adelphi University in Garden City, NY in 2003. Her clinical work experience includes serving since 2001, as a Family Nurse Practitioner at Staten Island University Hospital/Norwell Health, a major tertiary referral center in New York City. From 2002–2006; 2008-2009, she was also an Assistant Professor of Nursing at Monmouth University in Long Branch, NJ. Currently, in addition to her clinical practice as a certified family nurse practitioner, she is an Adjunct Clinical Professor at Columbia University, and an Adjunct Assistant Professor at Hunter Bellevue School of Nursing both in New York City, where she teaches and trains nurse practitioner students. She has also served as a testifying and consulting expert for the New York State Education Department, Office of Professional Discipline.

This witness may be called upon to provide testimony concerning her observations, actions, opinions, or conclusions arising from or related to the reports and the information generated, including the underlying data which provides the basis for the report. Her opinions will be based on her education, training, experience and expertise within her respective professional fields.

The information required by Federal 26 is included in Diane Meehan's expert report.

Leslie Johanson, MSN RN CPNP

2712 Parkhaven Drive
Flower Mound, Texas 75022
214-755-0629
johansonleslie@gmail.com

Leslie Johnson is an advanced practice registered nurse (APRN), unencumbered, licensed by the Texas Board of Nursing. She has a national certification as a mid-level pediatric provider. She has been practicing as an APRN (NP), mostly in primary care, for 7.5 years (RN 13 years). She recently began orienting to an urgent care role. She has a master's in nursing from the University of Texas, Medical Branch, and has experience with multiple electronic health record applications in multiple settings. She also has chart review experience, reviewing charts for almost all patient transfers into one of her practice sites, for close to 5 years.

This witness may be called upon to provide testimony concerning her observations, actions, opinions, or conclusions arising from or related to the reports and the information generated, including the underlying data which provides the basis for the report. Her opinions will be based on her education, training, experience and expertise within her respective professional fields.

The information required by Federal 26(a)(2)(B) is included in Leslie Johnson's expert report.

2. Defendants may call the following witnesses if the need arises: Defendants may supplement this response as needed or in rebuttal to Plaintiffs' pretrial disclosures.

B. DEPOSITIONS

3. Defendants may supplement this response as needed or in rebuttal to Plaintiffs' pretrial disclosures.

C. EXHIBITS

4. Defendants may offer the following exhibits:

No.	Document Description	Document No.	
1.	Combined payroll records	D 1 - 893	
2.	Concentra	D 896	
3.	Plaintiff employee	D 894-903 and 910-913	
4.	Flu chart	D 902 - 2	
5.	Cough, Fever chart	D 901 - 1	
6.	Supplement to Ledford records	D 1022-1034	
7.	Defs Initial Disclosures	1-259	
8.	Supplemental Ledford Records	D 194-198	
9.	Video_Apr_16_19 04:54-37 PM	D 909	
10.	Video entering EMR data	D 906 - M2U00003	

11.	Hows worked estimates	D 914-971	
12.	Video entering EMR data	D 905 - M2U00002	
13.	Huerta Statment	D 894	
14.	Video entering EMR data	D 904 - M2U00001	
15.	Charts - exemplar MB-TSL	D 910 - 913	
16.	Huerta-Catano DK chart totals	D 895	
17.	Video_Apr_16_19 04-50-02 PM	D 908	
18.	Toe injury chart	D 903 - 3	
19.	Video_Apr_16_19 04-42-45 PM	D 907	
20.	NonCompete to Concentra_3.12.18	D 898	
21.	New EMR login information	D 1001-1021	
22.	Amarillo Urgent Care and Dr. Khan Employee Handbook	D*000830	
23.	October 2017 - June 2018 calendars with providers scheduled	D*000205	D*000842
24.	Calendars with providers scheduled (various months)	P-000001	D*000213
25.	Darrell Kimbrough Employment Agreement	D*000235	P-000014
26.	Darrell Kimbrough 2016 W-4	D*000494	D*000236
27.	Darrell Kimbrough 2017 and 22018 W-2	DK-000019	D*000494
28.	Darrell Kimbrough Payroll Register	D*00077	DK-000019

29.	Darrell Kimbrough Detailed Payroll History	D*00078	D*00077
30.	Darrell Kimbrough Pay Stubs	D*000108	D*000106
31.	Screenshots of text messages between Darrell Kimbrough and Cris Rico (1/29/2018-4/18/2018)	DK-000004	DK-000015
32.	Concentra offer letter to Darrell Kimbrough	DK-000016	DK-000018
33.	Tina Spohn-Ledford Employment Agreement (w/handwritten note)	D*000237	D*000238
34.	Tina Spohn-Ledford Employment Agreement (w/handwritten notes; unexecuted)	D*000651	D*000653
35.	Tina Spohn-Ledford Request Off Form	D*000820	D*000820
36.	Tina Spohn-Ledford 2016 W-4	D*000654	D*000654
37.	Tina Spohn-Ledford 2016 W-2	TSL-000083	TSL-000083
38.	Tina Spohn-Ledford 2017 W-2	TSL-000084	TSL-000084
39.	Tina Spohn-Ledford 2018 W-2	TSL-000085	TSL-000085
40.	Tina Spohn-Ledford Payroll History	D*000138	D*000141
41.	Tina Spohn-Ledford Payroll Register	D*000142	D*000155
42.	Tina Spohn-Ledford Detailed Payroll History	D*000156	D*000198
43.	Tina Spohn-Ledford Detailed Payroll History	D*1025	D*1034
44.	Letter from Melissa Chavez re: Tina Spohn-Ledford and provider charting	D*000215	D*000215
45.	Check image: for payment to Tina Spohn-Ledford re: charts	D*000877	D*000877
46.	Mary Benard Employment Agreement	D*000224	D*000225
47.	Mary Benard Employment Agreement	D*000226	D*000227

48.	Mary Benard Employment Agreement	D*000228	D*000229
49.	Mary Benard Employment Agreement	D*000230	D*000234
50.	Mary Benard 2016 W-4	D*000247	D*000248
51.	Mary Benard 2017 and 2018 W-2	MB-000070	MB-000071


5. Defendants may offer the following exhibits if the need arises or if needed for rebuttal or cross examination of any witnesses:

No.	Document Description	Document No.
52.	Darrell Kimbrough Answers to Interrogatories and Requests for Production	
53.	Mary Bernard's Answers to Interrogatories and Requests for Production	
54.	Tina Spohn-Ledford Answers to Interrogatories and Requests for Production	
55.	Defendants' First Amended Answers to Plaintiffs' Second Interrogatories	
56.	Defendants' First Supplemental Responses to Plaintiffs Second Request for Production	
57.	Defendants' Responses to Plaintiffs Second Interrogatories	
58.	Defendants' Responses to Plaintiffs Second Request for Production	

6. Defendants reserve the right to amend these disclosures in response to Plaintiffs' disclosures or as necessary prior to trial.

Respectfully submitted,

COWLES & THOMPSON, PC

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2021, a copy of the foregoing was filed electronically using the Court's CM/ECF system and served in accordance with the Federal Rules of Civil Procedure. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing.

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By: 

Casey Erick